

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

David Richard Walker, Jr., #188417)	C/A No. 3:15-3536-JMC-JDA
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
Chief Dennis Tyndall, Police,)	
)	
Defendant.)	
)	

David Richard Walker, Jr. ("Plaintiff"), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff is currently detained in the Lexington County Detention Center ("LCDC"), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

BACKGROUND

Plaintiff alleges he is suing Dennis Tyndall ("Tyndall"), the Police Chief of the West Columbia Police Department, for slander and invasion of privacy. [Doc. 1 at 2.] Specifically, he alleges the following facts. On or about March 5, 2013, Tyndall "did assert [and] alleged" to News 10 (wistv) untrue facts about Plaintiff, the suspect. [Doc. 1.] Tyndall stated and accused Plaintiff of the following: on December 10, 2012, Plaintiff lived with Catherine Carrie Banty at a residence; they had a four-year old daughter; and Plaintiff strangled and beat to death Banty while the daughter was inside the home. [*Id.*] Tyndall also stated that, after killing Banty, Plaintiff left the daughter alone inside the home with her mother's body. [*Id.*]

Tyndall also stated that Aiken County deputies stopped Plaintiff for acting suspicious. [*Id.*] And, according to Tyndall, Plaintiff without provocation then told law enforcement that he was wanted for murder. [*Id.*]

Plaintiff contends that all of Tyndall's statements were false.¹ [*Id.*] He further alleges that Tyndall's misconduct constitutes slander, libel, defamation, and invasion of privacy thereby damaging his reputation, character, good name, morality, and relationships. [*Id.*] He seeks damages. [*Id.*]

This Court takes judicial notice that Plaintiff was arrested on March 4, 2013, for murder. See Lexington County 8th Judicial Circuit Public Index, <http://cms.lex-co.com/SCJDWeb/PublicIndex/PISearch.aspx>, (enter "David Richard Walker" and "search," click on "2013A3221100569," and click "Charges") (last visited October 13, 2015); see also *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'").

STANDARD OF REVIEW

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which

¹Plaintiff mentions that Tyndall used these statements in an arrest warrant.

relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

The Complaint should be dismissed for failure to state a claim on which relief may be granted. The crux of this action alleges defamation and invasion of privacy claims against Tyndall. Plaintiff cannot bring his defamation, slander, and libel² claims in this federal court pursuant to § 1983. An alleged act of defamation of character or injury to reputation is not actionable under 42 U.S.C. § 1983. *Paul v. Davis*, 424 U.S. 693, 697–710 & nn. 3–4 (1976). Similarly, there is no general constitutional right to privacy; thus, Plaintiff cannot bring such a claim pursuant to § 1983. See *Burris v. Ware*, C/A No. 2:13-699-RBH, 2014 WL 4793805, at *4 (D.S.C. 2014), *aff’d*, 600 F. App’x 111 (4th Cir. 2015). Civil rights statutes, such as 42 U.S.C. § 1983, do not impose liability for violations of duties of care

²Slander usually refers to acts of defamation that are “expressed in a transitory form, esp. speech,” while libel refers to acts of defamation that are expressed “in a fixed medium, esp. writing but also a picture, sign, or electronic broadcast.” *Black’s Law Dictionary* (9th ed. 2009). Defamation is the “act of harming the reputation of another by making a false statement to a third person.” *Id.*

arising under a state's tort law. *DeShaney v. Winnebago Cnty. Dep't of Soc. Serv.*, 489 U.S. 189, 200–03 (1989).

Also, to the extent Plaintiff merely seeks to assert state law claims of defamation and invasion of privacy in this Court, he may do so if diversity jurisdiction is satisfied. A plaintiff may file a state law claim in a federal court under the diversity statute, 28 U.S.C. § 1332, if that statute's requirements are satisfied. *See Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011). With the exception of certain class actions, the diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00). *See id.*; 28 U.S.C. § 1332(a). Complete diversity of parties in a case means that the citizenship of every plaintiff must be different from the citizenship of every defendant. *Central West Virginia Energy Co.*, 636 F.3d at 103. Here, Plaintiff appears to allege that both parties are domiciled in South Carolina. Thus, complete diversity is lacking, and this Court has no diversity jurisdiction over this action.

RECOMMENDATION

It is recommended that the District Court dismiss this action without prejudice and without issuance and service of process. *See Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). **Plaintiff's attention is directed to the important notice on the next page.**

October 14, 2015
Greenville, South Carolina

S/Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).